

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID LEE WOMACK,	:	CIVIL ACTION NO. 1:06-CV-2348
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
JOSEPH V. SMITH, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 11th day of May, 2009, upon consideration of the judgment (Doc. 54) of the Third Circuit Court of Appeals entered in the above-captioned case, and the telephone conference conducted on May 7, 2009 (Doc. 57), wherein the parties sought a ruling regarding defendants' claims of qualified immunity and *respondeat superior*,¹ both of which were raised but not ruled upon in the motion (Doc. 23) to dismiss, or in the alternative, for summary judgment, and it appearing that the court entered a protective order on May 16, 2007 (Doc. 37), prohibiting plaintiff from noticing depositions until the qualified immunity claim was resolved, it is hereby ORDERED that:

¹ In the motion to dismiss, or in the alternative, for summary judgment (Doc. 23), defendants Lappin, Dodrill, and Watts raised a *respondeat superior* defense, (Doc. 26 at 8-11), while all defendants asserted a qualified immunity defense, (*id.* at 18-20). The court did not reach the merits of these defenses, but instead granted summary judgment due to plaintiff's failure to exhaust his administrative remedies. (*See* Doc. 50.)

1. The order of court (Doc. 37) dated May 16, 2007 is VACATED.
2. The defense of qualified immunity, raised by all defendants in the motion (Doc. 23) for summary judgment, is DENIED without prejudice to defendants' right to refile a Rule 56 motion reasserting this defense at the close of fact discovery.
3. The defense of *respondeat superior*, raised by defendants Lappin, Dodrill, and Watts in the motion (Doc. 26) for summary judgment, is DENIED without prejudice to defendants' right to refile a Rule 56 motion reasserting this defense at the close of fact discovery.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge